

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

<b>IN RE: ETHICON, INC., PELVIC</b>	:	<b>MDL NO. 2327</b>
<b>REPAIR SYSTEM PRODUCTS LIABILITY</b>	:	
<b>LITIGATION</b>	:	
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<b>THIS DOCUMENT RELATES TO ETHICON</b>	:	
<b>WAVE 8 CASES</b>	:	
_____	:	

**KLINE & SPECTER’ P.C.S’ MOTION TO EXTEND DEADLINES FOR PLAINTIFFS’  
REPOSSES TO DEFENDANTS’ WAVE 8 DISPOSITIVE AND DAUBERT MOTIONS**

Pursuant to the Federal Rules of Civil Procedure, Kline & Specter, P.C. serves this Motion to Extend Deadlines for Plaintiffs’ Responses to Defendants’ Wave 8 Dispositive and Daubert Motions from seven (7) days to fourteen (14) days.

**I. FACTUAL BACKGROUND**

On June 13, 2018, this Court issued PRETRIAL ORDER (“PTO”) #303; (Amended Docket Control Order – Ethicon, Inc. Wave 8 cases). PTO #303 amended the January 30, 2018 PTO #280 (Docket Control Order – Ethicon, Inc. Wave 8 Cases.). *See* PTO #303, attached as Exhibit “A”; *see also* PTO #280 attached as Exhibit “B.”

PTO #280 Scheduling Deadlines for the filing and responses for Dispositive and Daubert Motions allowed fourteen (14) days for Plaintiffs’ to respond to Defendants’ Dispositive and Daubert Motions. The deadlines for these Motions were also staggered one week apart:

- |   |            |
|---|------------|
| • Filing of Dispositive Motions.            | 09/21/2018 |
| • Response to Dispositive Motions.          | 10/05/2018 |
| • Reply to response to dispositive motions. | 10/12/2018 |
| • Filing of Daubert motions.                | 10/05/2018 |
| • Responses to Daubert motions.             | 10/19/2018 |
| • Reply to response to Daubert motions.     | 10/26/2018 |

See Exhibit “B.”

PTO #303 amended these deadlines to only allow seven (7) days for Plaintiffs’ to respond to Defendants Motions and all the responses were now due on the same day:

- Filing of Dispositive Motions: 10/18/2018
- Response to Dispositive Motions 10/25/2018
- Reply to response to dispositive motions 11/01/2018
- Filing of *Daubert* motions 10/18/2018
- Responses to *Daubert* motions 10/25/2018
- Reply to response to *Daubert* motions 11/01/2018

See Exhibit “A.”

Kline & Specter asserts that limiting the response times for these vital, case-specific responses is significantly unfair and an impossible task that will negatively affect the fundamental rights of each and every one of the Plaintiffs involved in this litigation. We are asking this Court to reinstate the fourteen (14) day response time for the reasons stated below.

## **II. LEGAL ARGUMENT**

### **A. Previous Scheduling Orders in the Ethicon MDL**

Throughout this litigation, this Court has remained consistent with the amount of time allowed to respond to Dispositive and Daubert Motions for the multiple Waves.

PTO #86, the Third Amended Docket Control Order relating to all cases, amended PTO #73 the Second Amended Docket Control Order for all cases. While the initial Motion response deadlines initially were set for seven (7) days, this Court extended the response times to fourteen (14) days “at the oral request of parties.” See, PTO ## 73 and 86 attached as Exhibit “C.”

PTO #192, Docket Control Oder for Wave 1 Cases; PTO #206 Docket Control Oder for Wave 2 Cases, PTO #210, Docket Control Oder for Wave 3 Cases; PTO #243 Docket Control Oder for Wave 4 Cases, PTO #248, Docket Control Oder for Wave 5 Cases; PTO#251, Docket

Control Oder for Wave 6 Cases; and PTO #269, Docket Control Oder for Wave 1 Cases all allow a two-week response time for dispositive and Daubert motions. *See* PTO ## 192, 206, 210, 243, 248, 251, 269, attached as Exhibit “D.”

**B. Local Rules for the Southern District of West Virginia: LR Civ P 7.1.**

The Local Rules for the Southern District of West Virginia set a fourteen (14) day motion response time – which has been the standard used in this litigation. The Local Rules for the Southern District of West Virginia state the following:

Filing Deadlines for Response and Reply Memoranda. Memoranda and other materials in **response to motions shall be filed and served on opposing counsel and unrepresented parties within 14 days from the date of service of the motion.** Any reply memoranda shall be filed and served on opposing counsel and unrepresented parties within 7 days from the date of service of the memorandum in response to the motion. Surreply memoranda shall not be filed except by leave of court. These times for serving memoranda may be modified by the judicial officer to whom the motion is addressed. (emphasis added)

*See* LR Civ P 7.1.

While the rule does indicate that these recommended times may be modified by the judicial officer to whom the motion is addressed, surely this situation, where the rights of so many Plaintiffs are at stake, is not the situation where the recommended fourteen (14) days should be cut in half.

**C. A Seven-day Response time to Case-Specific Dispositive and Daubert Motions is Fundamentally Unfair to the Thousands of Injured Women Remaining in this Litigation.**

Plaintiffs have valid defenses to Defendant’s Dispositive and Daubert Motions, but Plaintiffs’ opportunity to present these defenses will be prejudiced in the absence of the extension of time herein requested. It is understandable that this Court wishes to remain steadfast to its set deadlines but seven (7) additional days cannot possibly create an undue burden upon this litigation. However, seven (7) additional days will make a difference in how Plaintiffs’ rights are best

represented. These are unusual circumstances. The fundamental rights of these thousands of women to have their cases heard without prejudice, surely constitutes the “good cause” required to satisfy Federal Rule of Civil Procedure 16(b)(4)’s “good cause” standard which states that a “schedule may be modified only for good cause and with the judge’s consent.” F.R.C.P. 16(b)(4).

### **III. CONCLUSION**

In conclusion and for the reasons stated above, Kline & Specter respectfully requests that this Court extend its Wave 8 deadlines for Plaintiffs’ Responses to Defendants’ Dispositive and Daubert Motions from seven (7) days to fourteen (14) days.

Respectfully submitted,

**KLINE & SPECTER, PC**



BY: \_\_\_\_\_

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Dated: July 6, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2018, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

**KLINE & SPECTER, PC**

A handwritten signature in black ink, appearing to read "Lee B. Balefsky".

BY: \_\_\_\_\_

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Dated: July 6, 2018